Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 280.

H. DRUSILLA MITCHELL, *Petitioner*,

vs.

THE FIRST NATIONAL BANK OF CHICAGO,
Respondent.

Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

ADDENDA TO STATEMENT AND BRIEF FOR RESPONDENT.

As to the question made by counsel for petitioners here, as to the effect of the stipulation which accompanied the reservation of the case of Freeman's Appeal from the Superior Court to the Supreme Court of Errors of Connecticut, we have this to say, that this is a point not made by the petitioners on their brief and therefore could not be noticed by us.

The claim of the petitioners seems to be, that we are concluded on account of the stipulation, by the result of that appeal, as by *res judicata*.

Our answer to this is, that, as we have before said, our being in the State Court at all was not voluntary on our part but compulsory. That the bank never consented to confer jurisdiction on the State Court, but the bank having been brought into that court against its will and compelled to a trial in the

State Court agreed upon the facts and assented to the reservation as a way to get through that court without unnecessary delay and expense. In short we consented to the reservation not to confer a jurisdiction, as the court already had that, but to save the necessity of a formal trial of the case which it was beyond the power of the bank to prevent.

The following is the law of Connecticut on the subject of reservation:

"SEC. 1114. Questions of law may be reserved by the Superior Court, Court of Common Pleas, or district court, in cases tried before either of them, for the advice of the Supreme Court of Errors: *provided*, that no such questions shall be reserved without the consent of all parties to the record in such cases; and the court making such reservation shall, in the judgment, decree, or decision made or rendered in such cases, conform to the advice of the Supreme Court of Errors."

Now, Freeman's appeal was decided by the Supreme Court February 23, 1897, before the case of the bank against Mitchell had been reached in the Circuit Court. On the 26th of May, 1897, Counsel for Mrs. Mitchell filed their plea in the Circuit Court. They also on the same day signed a stipulation and agreement that the case should be withdrawn from the jury and tried before the court, *p. 4 of Record*, and thereafter, on the 8th day of June, 1897, the facts in the case were agreed to by the parties and filed in the court, and it was formally agreed that these facts should be used by either party in the trial of the case of the bank against Mitchell, then pending in the Circuit Court. *pp. 4. 5 and 6 of Record.*

From all which it appears that the bank never made any such agreement or stipulation as in the contemplation of either party prevented it from having its day in the court of its own choice, and it also appears that never at any time did the petitioner or her counsel claim that the proceedings in the State Court could operate as a bar to the prosecution of the suit originally commenced by the bank in the Federal Court.

We cite the case used by us in argument but not quoted in our brief, viz:

Fuller *et ux vs.* Naugatuck Railway Co. 21 Conn. 556.

We also invite the attention of the Court to

Benjamin *vs.* Benjamin, 15 Conn. 347.

The statutes of 1877 printed at the suggestion of the Court are as follows:

"SEC. 2796. In case of marriages on or after April 20, 1877, neither husband nor wife shall acquire, by force of the marriage, any right to or interest in any property held by the other before, or acquired after, such marriage, except as to the share of the survivor in the property, as provided by law. The separate earnings of the wife shall be her sole property. She shall have power to make contracts with third persons, and to convey to them her real and personal estate, as if unmarried. Her property shall be liable to be taken for her debts, except when exempt from execution, but in no case shall be liable to be taken for the debts of the husband. And the husband shall not be liable for her debts contracted before marriage, nor upon her contracts made after marriage, except as provided in the succeeding section.

SEC. 2797. All purchases made by either husband or wife in his or her own name shall be presumed, in the absence of notice to the contrary, to be on his or her private account and liability; but both shall be liable when any article purchased by either shall have in fact gone to the support of the family, or for the joint benefit of both, or for the reasonable apparel of the wife, or for her reasonable support, while abandoned by her husband. It shall, however, be the duty of the husband to support his family, and his property when found shall be first applied to satisfy any such joint liability; and the wife shall in equity be entitled to an indemnity from the property of the husband, for any property of her own that shall have been taken, or for any money that she shall have been compelled to pay, for the satisfaction of any such claim.

SEC. 2798. In case of marriage existing prior to April 20, 1877, the provisions of the two preceding sections shall apply, whenever any husband and wife have entered, or shall hereafter enter, during marriage, into a written contract with each other for the mutual abandonment of all rights of either in the property of the other, under prior statutes, or at common law, and

for the acceptance instead thereof of the rights of said sections provided, which contract shall be recorded in the Court of Probate of the district, and in the town clerk's office of the town in which they reside. And thereupon, said provisions shall apply to such marriage."

General Statutes of Connecticut, 1888, page 610.

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